

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**JANET KOTTMAN, ET AL.,
APPELLANTS
vs.**

**MISSOURI STATE FAIR, ET AL.,
RESPONDENTS**

DOCKET NUMBER WD77118

DATE: DECEMBER 23, 2014

Appeal from:

The Circuit Court of Pettis County, Missouri
The Honorable Robert L. Koffman, Judge

Appellate Judges:

Division Two: Victor C. Howard, Presiding Judge, James E. Welsh, Judge and Anthony Rex Gabbert, Judge

Attorneys:

Samuel M. Wendt, for Appellants

Doug Leyshock, for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JANET KOTTMAN, ET AL., APPELLANTS

v.

MISSOURI STATE FAIR, ET AL., RESPONDENTS

WD77118

Pettis County, Missouri

Before Division Two: Victor C. Howard, Presiding Judge, James E. Welsh, Judge and Anthony Rex Gabbert, Judge

Janet and Gary Kottman appeal from the trial court's judgment against them on their claims against the Missouri State Fair and Terry Watson for negligence, negligence per se, respondeat superior, negligent entrustment, negligent hiring and retention, and loss of consortium arising from Ms. Kottman's fall from a tram at the Missouri State Fair in August 2008. At the close of the Kottmans' case-in-chief, Defendants filed a motion for directed verdict asserting that there was no substantial evidence supporting the causation element of the Kottmans' claims. Following arguments on the motion, the trial court granted a directed verdict in Defendants' favor. On appeal, the Kottmans contend that the trial court erred in granting the motion for directed verdict because they made a submissible case on their claims. The judgment directing a verdict is reversed, and the case is remanded for a new trial.

REVERSED AND REMANDED.

Division Two holds:

Where a jury could have reasonably inferred from the evidence that Ms. Kottman was in a position where a sudden stop of the tram would surprise her and she would be unable to catch herself, the tram driver believed an emergency existed and he suddenly and unexpectedly stopped the tram, and the sudden and unexpected stop of the tram caused Ms. Kottman to lose her balance and fall from the tram, the plaintiffs made a submissible case, and directed verdict was not proper.

Opinion by: Victor C. Howard, Judge

Date: December 23, 2014

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